

# Islamic human rights declarations and their critics

## Muslim and non-Muslim objections to the universal validity of the Sharia

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### Abstract

Islam and human rights – do these two subjects exclude each other? Not at the first glance since there are several Islamic human rights declarations like the “Cairo Declaration of Human Rights in Islam” stemming from 1990 and the “Universal Declaration of Human Rights” from 1981 which guarantee a number of rights for men, women, Muslims and Non-Muslims. At a second glance, however, there are certain areas of concern when comparing both texts with the “Universal Declaration of Human Rights in Islam” adopted and proclaimed by the UN in 1948. The Islamic human rights declarations always prescribe Sharia as the only criterion and leveling board for the acceptance or rejection of human, women’s or minorities’ rights. Nevertheless, we are presently witnessing a growing awareness and fearless activism of Islamic human rights organisations assisting the many victims in Islamic countries who fall prey to the all too often ongoing power struggle between government, police, security forces and orthodox religious leaders.

**Keywords** Human rights, Sharia law, Universal Declaration of Human Rights, Cairo Declaration of Human Rights in Islam, Arab Organisation for Human Rights, Egyptian Organisation for Human Rights.

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This paper was presented at the conference “Sharia and Western Legal Systems” organized by the Institute of Legal Policy of the University of Trier from 30-31 October 2006. Translated from German by TK Johnson, Ph.D. Paper received: 23 March 2011. Accepted: 25 June 2011. Contact: IFI ([www.islaminstitut.de](http://www.islaminstitut.de)), PoBox 7427, 53074 Bonn, Germany, [Christine.Schirmacher@uni-bonn.de](mailto:Christine.Schirmacher@uni-bonn.de).

## 1. The importance of the topic of human rights

Globalisation, the Middle East conflict and the long-term cohabitation of Muslims and non-Muslims in Europe all combine to make the topic “Islamic Human Rights declarations and their critics” a burning issue, and one which is no longer confined to experts on Islam, historians or students of politics, but affects literally everyone in Europe. The subject is a timely one in the light of the creation on 19 June 2006 of the UN Council of Human Rights as the successor to the Human Rights’ Commission with the stated aim and task of furthering human rights and mutual understanding and dialogue. This UN Council has passed a resolution on 26 March 2009 forbidding any critique of the world religions but in concrete terms only mentions Islam under “religions” (does it mean that Islam and Islam alone has to be protected against any form of critique?); the resolution was passed under protests by the European members. The Council is directly answerable to the UN General Assembly, guaranteeing concern for human rights at the highest level.

On the other hand this top-level concern is counter-balanced by the need for consultation and the fact that fundamental conflicts remain unresolved. At the creation of the 47-member Council of Human Rights observers noted that members include countries with a reputation for numerous human rights’ abuses, while Western democracies with the most comprehensive rights constitute a minority on the Council. Western democratic concepts of human rights are liable to be aggressively questioned while cultural, traditional, religious and not least political differences influence the definition of what constitutes human rights.

### 1.1 Can “Islamophobia” be classed as “the most pernicious form of terrorism”?

At the fourth session of Council of Human Rights from 13 to 30 March 2007, the “Organisation of the Islamic Conference” (OIC) was able to get its resolution adopted outlawing public discrimination against Islam world wide,<sup>2</sup> whereby discrimination is taken to mean anything derogatory to Islam or critical reflection on its possible responsibility for existing abuses or forms of extremism.

This same OIC declared in May 2007 that “Islamophobia”, i.e. “a deliberate defamation of Islam, and discrimination and intolerance against Muslims” especially in Europe and the USA, “is the worst form of terrorism.”<sup>3</sup> Similar language was used by the President of the Turkish Office for Religious Affairs (Diyanet), Ali

<sup>2</sup> See the report in: “Switzerland and the UN Council of Human Rights”. Informationsplattform human-rights.ch. <http://tinyurl.com/CH-UN2007> (27.05.2007).

<sup>3</sup> Siraj Wahab. “Islamophobia worst form of Terrorism.” in: Arab News. The Middle East’s Leading English Daily 17.05.2007 <http://tinyurl.com/Wahab2007> (27.05.2007).

Baradakoglu, in speech on the 1 November 2006 in which he called criticism of Islam a “threat to world peace.”<sup>4</sup>

What poses the greater threat to peace, freedom and human rights: their neglect, or critical reports of such neglect? There is obviously no consensus on this fundamental question. This makes a discussion of the meaning of human rights a burning issue.

## 1.2 Islam and Human Rights

Human rights in Islam – and this is the subject of this paper, not human rights in general – are a burning issue because it is impossible to overlook the fact that even today majority Muslim countries, for whose constitutions the Sharia is declared the main if not sole source of legislation, have a poor human rights record. In many of these countries civil rights – freedom of opinion, of the press, of religion, of assembly or of political opinion – are curtailed and no Arab country can be called a genuine democracy. Yet at the same time the topic of human rights is being hotly debated in Arab countries and numerous groups and individuals of widely differing persuasions are engaged in the struggle for human rights, even if this is often not registered in the West.

There are both encouraging and depressing developments in the human rights issue in Muslim countries, and the most important question is the direction in which they are moving, whether toward even greater curtailment of liberty and human rights or toward reform and enlightenment leading to an improved human rights situation. A prominent German convert to Islam, Murad Wilfried Hofmann, a lawyer who has served in several German embassies in North Africa, has expressed the opinion that the overwhelmingly critical assessment of the relationship between Islam, democracy and human and women’s rights means that “the future of Islam in the West depends on the answers which Muslims themselves give to these three issues.”<sup>5</sup>

The topic of human rights in an Islamic context deserves more than superficial treatment, for the picture is a complex one. On the one hand there are prominent Islamic human rights declarations such as the “Universal Islamic Declaration of Human Rights” published by the “Islamic Council” in 1981 or the “Cairo Declaration of Human Rights in Islam” of 1990 which argue for the concession of numerous human rights, even if the definition of their content in places differs substantially from Western conceptions.

While Sharia-based views often show a marked difference from Western human rights declarations, many critical voices from majority Muslim countries on the

<sup>4</sup> <http://tinyurl.com/vat2006> (28.05.2007).

<sup>5</sup> Murad Hofmann. Islam and Human Rights. <http://www.way-to-allah.com/themen/Menschenrechte.html> (27.05.2007), p. 1.

Internet but also in Western media are demanding that Muslim human rights declarations be extended or even fundamentally re-oriented, basing their arguments in favour of more comprehensive human rights on Islam and the Koran. Moreover the question of human rights abuses committed by the West cannot be excluded from a controversial discussion of the cultural and religious dimension of human rights claims. Frequently indicted are the Second World War, the Shoah, colonialism,<sup>6</sup> the 1991 Second Gulf War, Western military intervention in Afghanistan and the Third Gulf War of 2003, including the Abu Ghraib torture scandal.

Validity, grounds and content of human rights remain a hotly disputed topic between the West and the Muslim world as well as within the Muslim world itself. This paper examines the two most influential Islamic human rights declarations and sets alternative views from the liberal and “Reform” wing of Islam over against them. It concludes with a brief look at the role of the Sharia in the human rights issue.<sup>7</sup>

## 2. Islamic Human Rights Declarations

In contrast to the “Universal Declaration of Human Rights” of 1948 no Islamic declaration of human rights has received universal recognition in the Muslim world, been codified in legislation or achieved binding status as international law. Some Islamic human rights declarations have regional importance, others have failed to get beyond the draft stage, as is the case with the “Arab Charter on Human Rights” of 15 September 1994,<sup>8</sup> a revised version of which was adopted by the Council of the League of 22 Arab States but up to now has been ratified by only a few countries.

The so-called “Cairo Declaration of Human Rights in Islam”<sup>9</sup> of 1990 and the 1981 “Universal Islamic Declaration of Human Rights”<sup>10</sup> enjoy particular prominence.

### 2.1 The 1981 “Universal Declaration of Human Rights in Islam”

The “Universal Islamic Declaration of Human Rights” of 19 September 1981 was drawn up by the “Islamic Council”, a London-based NGO and private institution with no right to demand any following. The document originated at the initiative of the Saudi royal family and a number of influential scholars from Sudan, Pakistan and Egypt were involved in its formulation.<sup>11</sup>

<sup>6</sup> According to Ayatollah Khamenei’s 1987 justification of the Iranian Islamic revolution: “Human Rights in Islam” <http://tinyurl.com/HRI2005> (21.10.2005).

<sup>7</sup> An analysis of the history and justification of Western declarations of human rights would have exceeded the limits of this paper.

<sup>8</sup> For the text see: <http://tinyurl.com/Dipl2009> (19.02.2009).

<sup>9</sup> For the text see: <http://tinyurl.com/cairo90> (19.02.2009).

<sup>10</sup> For the text see: <http://www.alhewar.com/ISLAMDECL.html> (19.02.2009).

<sup>11</sup> According to Anne Duncker. Menschenrechte im Islam. Eine Analyse islamischer Erklärungen über die

An examination of its text of the Declaration soon reveals it was drawn up by Muslims (“we Muslims... declare”) with Muslims in view. The basis and claims of human rights are unilaterally derived from Islam. The foreword affirms: “Islam gave to mankind an ideal code of human rights fourteen centuries ago.”<sup>12</sup>

The preamble also sets out Islam’s claim to universal validity by referring to the duty of propagating (Arabic: “Da’wa”) Islam: “... knowing that the teachings of Islam represent the quintessence of Divine guidance in its final and perfect form, feel duty-bound to remind man of the high status and dignity bestowed on him by God ... in inviting all mankind to the message of Islam.” The claim that Islam is the only true religion runs throughout the text. Only under its direction is reason capable of mastering human existence.

This is because, it is claimed, an Islamic order is necessary “wherein all human beings shall be equal and none shall enjoy a privilege or suffer a disadvantage or discrimination by reason of race, colour, sex, origin or language.” This can hardly mean that all differences between Muslims and non-Muslims or between men and women before the law are abolished in Islam, as this would contradict the provisions of the Sharia. What is meant is that these differences cannot be classed as discrimination or privilege, since they are dictated by the Sharia and not by human considerations.

The preamble further emphasizes the inviolable and indissoluble nature of Sharia law, the government’s duty to uphold it, the need to achieve a homogenous society by a universal profession of (Islamic) religion and finally “ensure to everyone security, dignity and liberty in terms set out and by methods approved and within the limits set by the Law” i. e., the strict observance of the Sharia.

The 23 articles which follow elaborate in more detail how life looks if based solely on the Sharia. The first two articles deal with the right to life and liberty, the third affirms the equality of all human beings.

Article 4 gives everyone the right “to be treated in accordance with the Law [of Sharia], and only in accordance with the Law” and to reject whatever is in contradiction to it. Subsequent articles deal with the right to a fair trial (Article 5) and to protection from the abuse of power (Article 6), torture (Article 7) and protection of honour and reputation (Article 8), the right of asylum (Article 9) and of minorities (Article 10). This last is qualified by reference to the Sharia, which in fact implies a legal restriction of minority rights.

Article 11, devoted to the topic of participation in the conduct and management of public affairs, grants all Muslims the right to “assume public office”, again

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Menschenrechte. Wissenschaftlicher Verlag: Berlin, 2006, p. 27.

<sup>12</sup> <http://tinyurl.com/ideal2009> (19.02.2009).

raising the question whether this implies such rights are limited or even denied non-Muslims, as is in fact the case in numerous Muslim countries. The freedom of expression and religion guaranteed by Article 12 is again qualified by the corresponding Sharia provisions which for instance prohibit proselytising for another religion among Muslims, and condemn or even persecute people who convert from Islam or behave in a disloyal fashion towards the State, the community or (Islamic) religion. “No one, however, is entitled to disseminate falsehood or to circulate reports which may outrage public decency.”

The next articles deal with freedom of religion (Article 13), the right to free association (Article 14) and property rights (Article 15). “All means of production shall be utilised in the interest of the community (Ummah) as a whole”, implying non-Muslims are excluded. This agrees with the stipulations of the Sharia that non-Muslims may not benefit from alms given by Muslims in accordance with one of the Five Pillars of Islam: “The poor have the right to a prescribed share in the wealth of the rich, as fixed by Zakah [amount of alms], levied and collected in accordance with the Law.”

Article 16 deals with the protection of property, Articles 17 and 18 with the rights, dignities and social security of workers, Article 19 with the right to found a family. Article 20 refers to wives’ rights (home, maintenance, personal possessions, divorce, inheritance and honour), Article 21 the right to receive education, Article 22 the right of protection of one’s privacy and Article 23 the right to freedom of movement and residence.

It has been pointed out in various quarters that the English and French translations of the text employ more moderate expressions than the Arabic original. Terms such as “law” or in French “loi” could be understood to refer to the law of the land, whereas the Arabic refers only to the Sharia, which of course carries quite different overtones. Critics conclude “it is hard to avoid the impression that the aim of the versions in Western languages is to lull non-Muslims into a false sense of security and to present Islamic ethics in such a way as to make them acceptable to those who have imbibed the spirit of modern principles of human rights.”<sup>13</sup>

## 2.2 The 1990 Cairo Declaration of Human Rights

The Cairo Declaration of Human Rights was promulgated on 4 August 1990 by 45 of the 57 member states of the “Organisation of Islam Conference” (OIC<sup>14</sup>) founded

<sup>13</sup> Ali Merad. Zur “Allgemeinen Islamischen Menschenrechtserklärung.” in: Johannes Schwartländer. Freiheit der Religion. Christentum und Islam unter dem Anspruch der Menschenrechte. Matthias-Grünewald-Verlag: Mainz, 1993, p. 443-449, here p. 449.

<sup>14</sup> The OIC is closely linked to the Muslim World League in Mecca ([www.muslimworldleague.org/name.htm](http://www.muslimworldleague.org/name.htm)).

on 25 September 1969 in Rabat. The following day a copy was handed to the United Nations' High Commissioner for Human Rights.<sup>15</sup> The Cairo Declaration is probably more widely known than the "Universal Islamic Declaration of Human Rights" since it expresses more clearly what is not immediately evident in the "Universal Islamic Declaration of Human Rights" without a knowledge of the Sharia.

The Cairo Declaration also affirms that the Sharia is the sole basis for conceding human rights, whereas Western human rights declarations such as the 1948 Universal Declaration of Human Rights are regarded as Jewish-Christian formulations and thus rejected as purely human laws. As early as 1981 the Iranian government insisted that such "secular interpretations of the Jewish-Christian Tradition have no validity for Muslims", and in 1984 the Iranian representative Rajaie-Khorassani declared to the UN General Assembly that his country regards itself as bound only by God's law, not human laws, and would therefore not hesitate to infringe UN human rights should the two conflict. During the celebrations of the 50th anniversary of the UN declaration on 17 March 1998 the Iranian Foreign Minister let it be known that the 1948 Declaration needed "revision", a view which Iran has repeatedly affirmed since.<sup>16</sup>

The preamble to the Cairo Declaration of Human Rights makes clear it is not a question of tolerating or accepting non-Muslims on an equal basis but of enunciating Islam's claim to superiority on the basis of divine revelation. Alluding to sura 3.110 it states: the "Islamic Ummah which God made the best nation that has given mankind a universal and well-balanced civilization in which harmony is established between this life and the hereafter and knowledge is combined with faith."<sup>17</sup>

The OIC members also underline "the role that this Ummah should play to guide a humanity confused by competing trends and ideologies and to provide solutions to the chronic problems of this materialistic civilization." The preamble goes on to say that the OIC would like to make a contribution for everybody "to affirm his freedom and right to a dignified life in accordance with the Islamic Shari'ah." This immediately raises the question whether life not lived according to the Sharia can also have dignity. The divine and eternal character of the Sharia is then underlined by the reminder that rights and liberties vouchsafed by Islam can be neither abolished, infringed nor disregarded, for this would be "an abominable sin."<sup>18</sup>

The Declaration goes on to speak of the equality of all human beings (Article 1), the right to life and physical inviolability (Article 2), the right to limit war (Article

<sup>15</sup> According to Anne Duncker. *Menschenrechte im Islam. Eine Analyse islamischer Erklärungen über die Menschenrechte.* Wissenschaftlicher Verlag: Berlin, 2006, p. 62.

<sup>16</sup> David Littman. *Universal Human Rights and "Human Rights in Islam"* in: *Midstream* Feb/March 1999 and see <http://tinyurl.com/Littmann99> (27.05.2007), p. 1-2; 5-6.

<sup>17</sup> <http://www.religlaw.org/interdocs/docs/cairohrislam1990.htm> (19.02.2009).

<sup>18</sup> <http://www.religlaw.org/interdocs/docs/cairohrislam1990.htm>, p.1 (19.02.2009).

3), the right to honour (Article 4) and to found a family (Article 5), women's (Article 6) and children's rights (Article 7), legal rights (Article 8), education (Article 9), religion (Article 10), liberty (Article 11), freedom of movement (Article 12), the right to work (Article 13) and make a living (Article 14), property matters (Article 15) and profit (Article 16), how to attain purity in society (Article 17), protection of religion and privacy (Article 17), equality before the law (Article 19), protection from arbitrary measures (Article 20) and kidnap (Article 21), freedom of expression (Article 22), and protection from abuse of authority (Article 23).

What appears *prima facie* hardly to differ from non-Muslim human rights declarations in fact diverges at numerous points from the 1948 UN Declaration of Human Rights.

In its title (or better in the last paragraphs) the Cairo declaration states in Articles 24 and 25 its controlling principle of interpretation: "All the rights and freedoms stipulated in this Declaration are subject to the Islamic Shariah" and Article 25 states more generally "The Islamic Sharia is the only source of reference for the explanation or clarification of any of the articles of this Declaration." This subjection of interpretation to the Sharia is evident in every single one of the remaining 23 articles.

Article 1 affirms that "all men are equal in terms of basic human dignity and basic obligations and responsibilities", yet is obvious that it does not refer to the same "rights" as in the UN's Universal Declaration of Human Rights of 1948.<sup>19</sup> The Cairo declaration adds further that "true faith is the guarantee for enhancing such dignity along the path to human perfection." This raises the question whether this dignity can only be attained by receiving the "true faith" (of Islam). Article 1b seems to suggest this when it affirms "no one has superiority over another except on the basis of piety and good deeds." Piety and good deeds are however frequently referred to in the Koran as signs of genuine (Islamic) faith and fulfilment of (Islamic) religious duties. (e.g. sura 19.96).

The inviolability and protection of human life is again limited by the Sharia according to Article 2a: "it is prohibited to take away life except for a Shari'ah-prescribed reason", which permits taking of life in the case of adultery or apostasy for instance. The Sharia thus takes precedence over all secular legislation.

Referring to equal rights for women, the Cairo declaration notes that a woman should not be prevented from marrying and "no restrictions stemming from race, colour or nationality shall prevent them" (Article 5), yet there is no mention of the free choice of marriage partner regardless of his religion. This reflects the classical interpretation of the Sharia stipulation, which has the force of law in Arabic countries,

<sup>19</sup> <http://www.un.org/Overview/rights.html> (19.02.2009).



that a Muslim woman may not marry a non-Muslim. While it is further affirmed that woman is “equal to man in human dignity”, she evidently does not possess equal rights, which is impossible under the Sharia in its traditional, and thus the majority, interpretation, which denies women equal status in inheritance, marital and divorce law. Neither Islamic tradition nor the Cairo declaration regard this as discrimination against women, then there is a “divinely ordained inequality between man and woman”<sup>20</sup> and “equality in the sight of God... does not necessarily mean equality before the law.”<sup>21</sup>

The stipulations of the Sharia also lie thinly veiled behind Article 7, which affirms a child’s right to “proper nursing, education and material, hygienic and moral care . . . in accordance with ethical values and the principles of the Shari’ah,” according to which no Muslim child may be brought up by non-Muslims. A similar expression is found in Article 9 where the aim of education is stated to be to “strengthen his faith in God,” thus excluding on principle the possibility of either a secular or Christian upbringing.

The Sharia’s precedence over national legislation also forms the background to the right to asylum in Article 12, to artistic freedom and freedom of expression in Article 16 as well as to action of behalf of justice and law (Article 22). The emphasis is always that such freedoms can only be granted within the framework of the Sharia and as long as they do not contradict its stipulations.

The Cairo declaration, like the Universal Declaration of Human Rights in Islam, is in no way binding and thus cannot be enforced. Indeed some observers consider it has gained “no broad acceptance in the Muslim world generally.”<sup>22</sup>

## 2.3 Problem areas in Islamic human rights declarations

### 2.3.1 The supremacy of the Sharia

These Islamic human rights declarations are problematic not only because they limit Muslims’ freedoms (and even more so those of non-Muslims) but because of the priority afforded to the Sharia over all other conception of human existence, for “divine law takes precedence over human law – that is the interpretative rule in case of conflict.”<sup>23</sup> As a result Islam is elevated to the sole true religion and rule of

<sup>20</sup> As Hans-Georg Ebert puts it in: *Das Personalstatut arabischer Länder. Problemfelder, Methoden, Perspektiven.* Leipziger Beiträge zur Orientforschung, Bd. 7. Peter Lang: Frankfurt, 1996, p. 44.

<sup>21</sup> According to Gudrun Krämer. *Islam, Menschenrechte und Demokratie: Anmerkungen zu einem schwierigen Verhältnis.* Herta Benz Vorlesung 20. Ladenburg, 10.7.2003. [http://www.daimler-benzstiftung.de/cms/uploads/images/events/lecture/bbv20\\_kraemer.pdf](http://www.daimler-benzstiftung.de/cms/uploads/images/events/lecture/bbv20_kraemer.pdf) (27.06.2011), p. 28.

<sup>22</sup> Donna Arzt. *Religiöse Menschenrechte im Nahen Osten und in Nordafrika.* in: *Gewissen und Freiheit*, Vol. 23 No. 46-47/1996, p. 123-143, here p. 125.

<sup>23</sup> Gerhard Höver. *Grundwerte und Menschenrechte im Islam.* in: Bernhard Mensen SVD (ed.). *Grundwerte und Menschenrechte in verschiedenen Kulturen.* Akademie Völker und Kulturen St. Augustin/

life which “by inviting mankind to transcend the lower level of animal life to be able (sic) to go beyond the mere ties fostered by the kinship of blood, racial superiority, linguistic arrogance, and economic privileges.”<sup>24</sup> Life outside Islam is thus denoted a “lower level of animal life” characterized by racism, economic exploitation and arrogance. Such vocabulary hardly permits one to deduce the equality of all human beings on the basis of their common humanity.

The overriding concern in the ordering of society is not human well-being but the will of God as authoritatively laid down in the Koran and the tradition. This means, according to the contemporary lyric poet Ali Ahmed Said, human beings are simply “wiped out.” He states the difference between Islamic and non-Islamic societies as follows: “Western thinkers claim God is dead. We could say that for us man is dead and God alone is alive.”<sup>25</sup> Religion thus becomes the sole criterion of human status, rights and privileges as well as of a country’s politics and social organisation. The logical conclusion is a denial of Western human rights concepts and restrictions of the rights therein expressed.<sup>26</sup>

### 2.3.2 Imprecise formulations

While the Sharia takes priority as a regulative principle, these Islamic definitions of human rights remain vague and imprecise when it comes to concrete statements. One reason for this is that there is no such thing as a codified and unambiguous canon of Sharia law, simply a multitude of interpretations of Koran texts and the traditions by authoritative scholars, especially from the period up to the 10th century AD, regarded as the normative period of the formation of Islamic law.

Hans Zirker’s criticism of the Cairo declaration is therefore justified, that it lays down general moral principles but furnishes neither “practicable norms nor legally sustainable rights.”<sup>27</sup> The concept of human rights in general is conceded, yet at the same time their metaphysical grounding in divine legislation effectively puts them above human criticism and removes them from any possibility of enforcement in a human court of law. Indeed some critics pose the question whether Islamic hu-

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Steyler Verlag: Siegburg, 1988, p. 37-51, here p. 44.

<sup>24</sup> Human Rights in Islam. Institute of Islamic Information and Education (III & E): Human Rights in Islam, Brochure Series; No. 7. <http://www.usc.edu/dept/MSA/humanrelations/humanrights/> (19.05.2007), p. 3.

<sup>25</sup> Adonis. Die Sackgasse der Moderne in der arabischen Gesellschaft. in: Erdmute Heller; Hassouna Mosbahi (ed.). Islam, Demokratie, Moderne. Aktuelle Antworten arabischer Denker. C. H. Beck: München, 1998, p. 62-71, here p. 70.

<sup>26</sup> See the discussion of the restrictions in: Ann Elizabeth Mayer. Islam and Human Rights. Tradition and Politics. Westview Press: Boulder, 1995, p. 61ff.

<sup>27</sup> Hans Zirker. Die Kairoer Erklärung der Menschenrechte im Islam, in: Moslemische Revue 21/76, Jan-March 2000, p. 54-66, here p. 65.

man rights declarations are intended for a Muslim public or not rather aimed at educated Western elites in order to underline an independent Muslim point of view and the right to affirm it in the light of world opinion.<sup>28</sup> However this may be, it is noteworthy that it was felt necessary to formulate specifically Islamic declarations of human rights and to give them their own markedly different emphases.

### 2.3.3 Specifically religious grounds of human rights

“The consensus of both [Western and Islamic] declarations is that there is such a thing as human rights.”<sup>29</sup> Apart from this there are huge disparities as regards the grounds and the philosophical bases of human rights.

Several Muslim apologists have emphasised that Islamic human rights declarations need to be understood as alternative models to the 1948 Universal Declaration of Human Rights, even though numerous Islamic countries were among its original signatories, since they see the UN declaration as based on Judeo-Christian values whereas the Sharia is, unlike purely human laws, of divine origin, “granted by Allah.”<sup>30</sup> This means it is completely just, since Allah acts justly toward his creatures and commands them to act justly toward one another.<sup>31</sup> Sharia law is therefore ultimately not optional,<sup>32</sup> however many other diverging human rights documents may have been formulated. For this reason Islamic human rights definitions enjoy universal validity regardless of time or place and not only for Muslims and Muslim countries, for “Islam lays down a number of basic rights which are universally valid for the whole of humanity and which are to be observed and respected, irrespective of whether or not a person lives within the territory of an Islamic State.”<sup>33</sup> The thinking behind this is that all human beings are in fact Muslims by birth and belong to Islam unless they have become Jews or Christians by upbringing and environment, for “Every child is born a Muslim . . . The Prophet Muhammad said, ‘No babe is born but upon Fitra (as a Muslim). It is his parents who make him a Jew or a Christian or a Polytheist’ (Sahih Muslim, Book 033, Number 6426) . . . Children are not born out of any sin, original, inherited or derived. They are born on the religion

<sup>28</sup> According to Ridwan al-Sayyid. Contemporary Muslim Thought and Human Rights. in: Islamochristiana 21(1995), p. 27-41, here p. 37.

<sup>29</sup> Ali al-Nasani. Menschenrechte im Islam. amnesty international. <http://tinyurl.com/Nasani02> (19.05.2007), p. 1.

<sup>30</sup> Die Menschenrechte im Islam. <http://www.enfal.de/insan-ha.htm> (27.05.2007), p. 2.

<sup>31</sup> As argued by Ja'far Abdul Salam Ali. Human Rights in Islam. in: The Muslim World League Journal, Vol. 32, No. 7, September 2004, p 11-16, here p. 15.

<sup>32</sup> Murad Hofmann. Der Islam und die Menschenrechte. <http://www.way-to-allah.com/themen/Menschenrechte.html> (27.05.2007), p. 8.

<sup>33</sup> Die Menschenrechte im Islam. <http://www.enfal.de/insan-ha.htm> (27.05.2007), p. 1.

of their nature, i.e., Islam.”<sup>34</sup> If, however, human rights are religiously based and recognize the unique superiority of Islam over all other religions, then atheists or members of other religions cannot fully enjoy the human rights so defined.

These presuppositions imply that people not living according to the Sharia are not really capable of responsible ethical behaviour, since Islam is the sole source of socially cohesive and just ethics. In the final instance it is the stipulations of the Sharia and not national legislation which settle the question of right and wrong, e.g. that life may “only” be taken if permitted by the Sharia.

These Muslim human rights declarations are less explanations of human rights and more a definition of exceptions and restrictions, since full human rights and social solidarity, evidenced by social security payments from alms, are in most cases the preserve of the Muslim male. Muslim women have graduated rights and solidarity, those who do not belong to the Umma come even further down the scale. Yet the Sharia even restricts the rights of Muslim men, especially freedom of speech and conscience and the right to freedom of religion, since disloyal anti-social behaviour strips him of the rights afforded by the Sharia.

#### **2.3.4 Missing rights**

Islam human rights declarations pose problems not only in their definitions of human rights but also in areas they simply omit.

In contrast to the 1948 United Nations’ “Universal Declaration of Human Rights” neither of the two Islamic declarations makes any reference to the equality of human beings, to the equality of men and women or converts before the law, or to full and independent legal rights for women. Also missing is a full and frank acknowledgement of complete freedom of religion and conscience (also in the negative sense), the unrestricted public practice of one’s religion or philosophy, rights to untrammelled liberty, to political opinion, and the fraternity and equality of all human beings irrespective of the boundaries of the Umma.

Another problematic feature of these Islamic human rights declarations is not only the avowed supremacy of the Sharia over all other legislation, including national laws, but also their silence as to corporal punishments promulgated by the Sharia, such as the amputation of a hand or foot as punishment for theft, or flogging or stoning for immorality or adultery. One looks in vain for condemnation or rejection of such practices. While it may be true that there are few Muslim countries where these forms of punishment are applied, even today influential theologians continue strongly to maintain their validity in principle. Therefore it is absolutely justified to speak in this connection of “the paradox of validity in principle and

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<sup>34</sup> See e. g. <http://www.islam101.com/dawah/newBorn.htm> (27.06.2011).

practical non-application.”<sup>35</sup> If Islamic human rights declarations were really serious about human dignity, an unambiguous condemnation of corporal punishment on the part of influential Muslim organisations such as the Saudi-Arabian “Muslim World League” would in effect signify a rejection of the norms of the Sharia. Until now the “Organisation of the Islamic Conference” (OIC) has failed to acknowledge as a terrible crime either the capital punishment laid down by the Sharia or the more frequently practiced lynch justice for converts from Islam, yet describes “discrimination against and intolerance towards Muslims” as well as “Islamophobia . . . the worst form of terrorism.”<sup>36</sup>

### 2.3.5 Lack of practical recommendations

A further problem with Sharia-based Islamic human rights declarations is that they offer no practical recommendations as to how to relieve recognised social abuses. Their insistence on society’s conformity to Sharia norms demonstrates the fundamentally ideological character of these draft declarations, and their failure to elaborate how this would lead to improvement show how remote they are from practice. How will introducing the Sharia contribute to combating deficiencies in education (especially widespread illiteracy) and infrastructure and housing, or solve the problems of migration to the cities, overpopulation, foreign debt, underdevelopment and poverty?

Farag Fouda, the well-known Egyptian intellectual and critic of the Sharia-based draft declarations murdered by extremists in 1992, put it like this:

Islam will not meet the challenge of progress by dressing our young people in Pakistani clothes and calling each other by names of the Prophet’s companions. We won’t catch up with scientific progress by chewing a piece of wood instead of using toothbrushes . . . and by wasting time discussing when the awaited and the false Messiah are going to appear . . . If this is the true face of Islam, how shall we face the 21st century?<sup>37</sup>

The ideological character of the declarations referred to becomes apparent when they allege to rescue human rights from human tampering. From the premise that God is the sole source of human rights they deduce that these can neither be granted nor rescinded by human decision and are thus not open to discussion. This sounds

<sup>35</sup> Heiner Bielefeldt. Menschenrechte in der islamischen Diskussion. <http://tinyurl.com/Bi-Islam> (19.05.2007), p. 6.

<sup>36</sup> Siraj Wahab. Islamophobia worst form of Terrorism. in: Arab News. The Middle East’s Leading English Daily, 17.05.2007. <http://tinyurl.com/Waha07> (27.06.2011).

<sup>37</sup> Farag Fouda. Die vergessene Tatsache. in: Erdmute Heller; Hassouna Mosbahi (ed.). Islam, Demokratie, Moderne. Aktuelle Antworten arabischer Denker. C. H. Beck: München, 1998, p. 167-192, here p. 185-186.

good in theory, but the daily experience especially of critics and opponents of the regime, particularly in Muslim countries, demonstrates that human beings are all too capable of rescinding and disregarding human rights. Where then can such God-given rights be legally enforced? The texts of Islamic human rights declarations are silent on this point. Projecting human rights from an earthly to a metaphysical realm divorces them from practice and reality.

### 3. The apologetic debate over Islamic human rights

Islamic apologists claim Islam is the original source of human rights, Islam secures human rights and its history furnishes numerous examples of their concession,<sup>38</sup> whereas Western countries only discovered them much later. This reasoning supports the view of Islam as the only completely unadulterated religion and Islamic jurisprudence as synonymous with justice and dignity, indeed “Islam as a world-wide valid system of liberty.”<sup>39</sup>

This attribution of human rights to Islam ultimately implies their wholesale re-definition, as in the claim that “Islam... has been familiar with all classical human rights for 1400 years and... codified them better than the West”<sup>40</sup> and “the Holy Qur’an, God’s law for mankind, proclaimed 1400 years in advance the human rights defined by the United Nations General Assembly in 1948.”<sup>41</sup>

“Classic human rights” are thus to be understood as those conceded by Islam, implying outside of Islam there can be no human rights<sup>42</sup> or that genuine human rights are identical with Islam, for Islam “regards human rights to be (sic) more sacred even than divine worship.”<sup>43</sup> It is not the religious basis of human rights which causes problems in this context, as long as they enjoy universal validity, but the fact that in the name of religion human rights are denied especially to women and non-Muslims.

#### 3.1 Are there only minor differences to Western human rights declarations?

The apologetic debate attempts to play down the “minor differences”<sup>44</sup> between the absolute Islamic norms and Western human rights declarations (e.g. with respect

<sup>38</sup> See e. g. <http://tinyurl.com/HDIGHR> (27.06.2011) or <http://tinyurl.com/usc-HRI> (27.06.2011).

<sup>39</sup> Ahmed Kaftaro. Der Islam und die religiöse Toleranz. in: *Gewissen und Freiheit*, 36/1991, p. 59-66, here p. 60.

<sup>40</sup> Murad Hofmann. Der Islam und die Menschenrechte. <http://www.way-to-allah.com/themen/Menschenrechte.html> (27.05.2007), p. 2.

<sup>41</sup> Hadayatullah Hübsch. *Islam und Menschenrechte*. Verlag der Islam: Frankfurt, 1993, S 5.

<sup>42</sup> “There is no such thing as human right (sic) in the abstract”. A. K. Brohi. *Nature of Islamic Law and the Concept of Human Rights*. in: *Human Rights in Islam*. Report of a seminar held in Kuwait, December 1980. International Commission of Jurists, University of Kuwait and Union of Arab Lawyers, op. cit., 1982, p 41-60, here p. 51.

<sup>43</sup> Shaikh Shaukat Hussain. *Human Rights in Islam*. Kitab Bhavan: New Delhi, n.d., p. 83.

<sup>44</sup> Murad Hofmann. Der Islam und die Menschenrechte. <http://tinyurl.com/MH-DIM07> (27.05.2007),

to apostasy and women's rights). In this context however it is hard to see how the perhaps currently best-known legal expert Yusuf al-Qaradawi can be called as a witness to the "minor differences", when he has spoken out in favour of the classical limitations of the legal rights for women and has clearly and unambiguously advocated the right to execute apostates and justified suicide attacks against non-Muslims.<sup>45</sup> No less incoherent is Murad Wilfried Hofmann's argument that individual Muslim countries are free to grant Christian and Jewish minorities more rights than have been traditionally conceded, or that women could inherit more than the traditional half-share if their father so determine. They could even be heard as witnesses in court, instead of remaining silent for fear of being regarded as unreliable, if they are "competent".<sup>46</sup> This may well represent Murad Hofmann's personal attempt at reconciling two differing world views or to mitigate the practical application of Sharia law but enjoys no consensus in classical Islamic scholarship and is therefore of no practical importance. And is he not here himself guilty of doing what he elsewhere criticizes, namely of "illegitimately subjecting the Sharia to one's own reason"?<sup>47</sup>

### 3.2 An Islamic basis for Western human rights?

On the other hand Hadayatullah Hübsch, for many years press spokesman of the Ahmadiyya community, goes so far as to look for grounds for some of the 1948 United Nations' Human Rights Declaration in Islam or the Koran<sup>48</sup> and concludes that the right to life, liberty and security in Article 3 correspond to the Islamic duty of proclaiming the truth of Islam to others by example and preaching without compulsion, since Islam does not justify compulsion or aggression, only self-defence.<sup>49</sup> He gives no precise definition of the term defence, which has been subject to various interpretations within political Islam. Also, according to Hübsch, in Islam women enjoy equal status with men,<sup>50</sup> a claim which corresponds neither to the practical daily life of the majority of Muslim women nor to the Sharia prescriptions on Muslim marriage.

Other areas in which Hübsch claims to find congruity between Islamic values and western human rights catalogues are the right to freedom of expression, religion and conscience, the right to family, work and education and the renunciation of violence and torture. He concludes with an appeal to "learn" from the Koran and

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p. 4.

<sup>45</sup> *ibid.* p. 4.

<sup>46</sup> *ibid.* p. 6.

<sup>47</sup> *ibid.*

<sup>48</sup> Hadayatullah Hübsch. *Islam und Menschenrechte*. Verlag der Islam: Frankfurt, 1993, p. 5.

<sup>49</sup> *ibid.* p. 1-2.

<sup>50</sup> *ibid.* p. 2.

Muslim tradition what is the “good” of which sura 41.35-36 speaks, thus deduced from Islamic tradition.<sup>51</sup> Non-Muslims will obviously not be able to follow this contextualised argument for the superiority of Islam.

Conversely, a possible correlation between Islam and the poor human rights situation in Muslim countries is dismissed with the argument that such human rights abuses derive solely from deficiencies in the political system and have nothing to do with religion. As the Muslim convert and apologist Murad Hofmann puts it: “It needs to be made clear that the multifarious abuses of human rights in so-called Islamic countries – including torture, state terror, police brutality, electoral fraud and censorship – are neither motivated nor condoned by Islam.”<sup>52</sup> At the same time it is true that also the West has been guilty of numerous human rights abuses right up to the present day – an argument increasingly propounded since the institution of the prison camp at Guantánamo Bay following 9/11 and the exposure of the use of torture in Abu Ghraib in Iraq in the fall of 2003 – and has no right to take the moral high ground but needs to “come off its high horse.”<sup>53</sup>

#### **4. Muslim opinion independent of Islamic human rights declarations**

The orthodox view referred to above brooks little or no flexibility as regards the validity of the Sharia in principle and can do little more than debate the practical application of its ancient provisions. There is nevertheless a variety of critical views pleading for a wholesale reform of the question of human rights and democracy, held mostly by individuals such as lawyers, intellectuals, writers or journalists and often characterised as “liberals” or “reformers”, “individuals situated outside the dominant elites who distance themselves from Islamism, Arab nationalism and vestiges of various residual shades of Communism.”<sup>54</sup>

One can differentiate between those who regard Islam as fundamentally irreconcilable with Western concepts of human rights and those who consider Islam as such to be compatible with human rights and democracy. For the latter the problem lies in an incorrect interpretation and application of Islam, in other words the abuse of power and misguided developments which cannot be laid at the door of Islam as such. Since Islam signifies peace, equality

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<sup>51</sup> Ibid. p. 4

<sup>52</sup> Murad Hofmann. Der Islam und die Menschenrechte. <http://tinyurl.com/MH-DIM07> (27.05.2007), p. 2.

<sup>53</sup> Ebd. p. 2.

<sup>54</sup> Ulrich Vogt. Die Demokratisierungsdebatte. in: Sigrid Faath (Hg.) Politische und gesellschaftliche Debatten in Nordafrika, Nah- und Mittelost. Deutsches Orient-Institut: Hamburg, 2004, p. 273-294, here p. 284.



and justice, the negative human rights record of some Muslim countries can only be regarded as shortcomings capable of being corrected by a return to “authentic” Islam.

#### **4.1 Proposals for reconciling Islam and human rights**

##### **4.1.1 Shirin Ebadi**

Prominent among the advocates of such views is the Iranian lawyer and 2003 Nobel Peace Prize winner Shirin Ebadi (\*1947), whose defence of dissidents and critics of the government has often roused the ire of the religious authorities. Governments with a poor human rights record are backward and repressive for Ebadi, but this is no more the fault of Islam itself than the oppression of women. Shirin Ebadi appeals for moderation and patience in her insistence on the ultimate compatibility of human rights and democracy with Islam. She concedes difficulties with the human rights situation in Iran, for instance equal rights for women and freedom of expression, but points to progress made in the last 25 years.<sup>55</sup>

##### **4.1.2 Mohammed Shabestari**

The contemporary Iranian theologian, Mohammed Shabestari (\*1936), a reformer and advocate of democracy, human rights and freedom of expression, sees human rights and democracy as purely man-made values about which the Koran is silent. Rather than contradicting it, for Shabestari democracy and human rights make sense within the framework of Islam which demands allegiance. Democracy and human rights are simply contemporary applications of the principles of just rule on earth laid down in the Koran.<sup>56</sup>

##### **4.1.3 Abdolkarim Soroush**

The Iranian philosopher and intellectual Abdolkarim Soroush (\*1954, his real name being Hossein Haj Farajullah Dabbagh) is probably more widely known than Shabestari. He is the most significant and indeed the leading representative of the current religious reform debate in Iran. While of the opinion that in Islam essential and eternally valid principles and ethical commands must be distinguished from purely contingent directives and that not all affirmations have the same status, his call for reforms in the unhistorical orthodox approach to the Koran and a modern interpretation of the Sharia does not involve fundamental criticism of the Koran and

<sup>55</sup> Shirin Ebadi; Juju Chang. Islam and Human Rights, in: Council on Foreign Relations. June 7, 2004. <http://www.cfr.org/publication.html?id=7093> (19.05. 2007), p. 2.

<sup>56</sup> Roman Seidel. Porträt Shabestari, Glaube, Freiheit und Vernunft. <http://tinyurl.com/Seid04> (27.06.2011).

the Sharia as such. He sees religion as part of a system whose supreme principle is rationality.

Soroush regards it as rational and the need of the hour to adopt human rights and democracy from other, non-Muslim countries. Reason gives legitimacy to a fresh interpretation of Muslim sources, since what reason approves of cannot contradict Islam. Soroush would like to see a religious democracy emerge in which every citizen can live his faith without coercion.<sup>57</sup>

This is not the first time theologians and intellectuals have sought to retain the eternally valid divine claim of the Sharia without tacitly having to accept the status quo, by distinguishing between God's eternally revealed word and law on the one hand and their fallible human interpretation and application on the other. To discuss not the substance but the interpretation of the Sharia is to define its content as historically contingent and thus open to change, paving the way for reform, critical reflection and possibly the end of the hegemony of orthodox views.

Shabestari and Soroush have thus far avoided open confrontation with the Iranian regime and the rule of the Mullahs. How their views would be received in a context of free discussion without fear of life and liberty, position and family, must remain an open question.

## **4.2 Islam incompatible with human rights**

Other Muslim intellectuals reject the notion that Islam could be compatible with human rights and plead for a fundamental renunciation of the Sharia as a basis for human rights and democracy.

### **4.2.1 Mahmud Muhammad Taha**

One of the most prominent examples is the founder of the Republican Brotherhood, Mahmud Muhammad Taha (\*1909 or 1911). For him, Islam stands for freedom, equal rights for men and women, democracy and freedom. The key to his position is the sole recognition of the early (apolitical) Islam of the Mecca period from 610 to 622 A.D. as normative, rather than the second, highly politicised stage in Muhammad's career in Medina from 622 to 632 A.D. This radical opposition to the classical view of the Sharia cost Taha his life. Despite his advanced age of about 75, he was publicly executed in January 1985 after a power struggle shortly before the then Sudanese president Jafar Muhammad an-Numeiri was deposed. His death caused highly negative signals for critical discussion within Islam which are still present till today.

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<sup>57</sup> Abdolkarim Soroush's biographical and professional details can be found on his own homepage: <http://www.dr.soroush.com/English.htm> (28.05.2007).

#### 4.2.2 as-Sadiq an-Naihum

The Libyan as-Sadiq an-Naihum takes a slightly different approach in denouncing what he sees as lust for power and oppression on the part of Sharia lawyers and their interpretations. He considers Islam can be reconciled with democracy if only the Koran were the sole source of jurisprudence and not the Sunna, the detailed and legally much more inflexible tradition. Muhammad is quoted as saying “Today I have perfected your religion for you” (sura 5.3) and never spoke of a second source of law beside the Koran.<sup>58</sup> an-Naihum believes that without the traditional texts it would be considerably more difficult if not impossible to justify making the Sharia a supreme guiding principle in politics and society.

#### 4.2.3 Muhammad Sa'id al-'Ashmawi

Similarly the Egyptian lawyer Muhammad Sa'id al-'Ashmawi (\*1932) sees Islam with its openness to interpretations as predestined to lead to democratic freedom, since “no one can claim to be in possession of absolute truth ... Open discussion ought rather to be guaranteed on the basis of the freedom and equality for all human beings which characterised Islam before it became political.”<sup>59</sup>

Other intellectuals and theologians who presuppose the inherent compatibility of Islam with human rights insist on the capacity to develop of a religion designed by God to serve mankind, and if this is best achieved under a democracy then from an Islamic standpoint there can be no objection.

All these models aim to limit the Sharia's curtailment of human rights and liberty, as well as the potential application of corporal punishment and discrimination against women, without however calling in question its claims in principle.<sup>60</sup> Such views have not found a numerous following and only among non-influential theologians of the leading universities, schools of learning and mosques. Anyone who proclaims them openly is often liable to discrimination or persecution, may have his writings proscribed or his licence to teach withdrawn, and require protection due to threats, or even have to save his life by seeking exile in the West.

#### 4.2.4 Taslima Nasrin

Taslima Nasrin (\*1962), the Bangladeshi doctor, human rights activist and writer, believes that Islam is fundamentally irreconcilable with democracy and human

<sup>58</sup> Lorenz Müller. *Islam und Menschenrechte. Sunnitische Muslime zwischen Islamismus, Säkularismus und Modernismus*. Hamburg, Deutsches Orient-Institut, 1996, p 262.

<sup>59</sup> Quoted from: Lorenz Müller, *op. cit.* 230, 210ff.

<sup>60</sup> More examples for alternative views of Muslim theologians trying to relativize the orthodox interpretation of sharia are found at Katerina Dalacoura. *Islam, Liberalism and Human Rights*. I. B. Tauris: London, 2003<sup>2</sup>, p. 58ff.

rights. The poor human rights record of majority Muslim countries is in her opinion due to inequalities between Muslims and non-Muslims and between men and women sanctioned by Sharia law partially incorporated in legislation but even more embedded in the thinking of considerable segments of the population. The fact that there is no separation between religion and state is in her opinion a further reason for the lack of democracy.<sup>61</sup> After persistent threats from representatives of political Islam Taslima Nasrin left Bangladesh in 1994 and fled to Europe.

#### **4.2.1 Mohsen Kadivar**

The Iranian philosopher Mohsen Kadivar (\*1959) gives a similar assessment. He sees no room in Islam as traditionally interpreted, in the Sharia or human rights based on it for democracy and equal rights for everyone irrespective of religion, sex or social status.<sup>62</sup> Kadivar criticises discrimination against women in Muslim countries and particularly condemns terror in the name of Islam. He identifies contradictions between statements in the Koran and the Tradition and human rights. For Kadivar the solution is to regard specific regulations of the Holy Scriptures as conditioned by their time. His criticisms led to him being condemned to 18 months in Teheran's infamous Evin prison.

## **5. Efforts to improve human rights in Muslim countries**

The protest against the poor human rights record in Muslim countries is not limited to more or less theoretical alternative concepts proposed by Muslim intellectuals but includes the many individuals, initiatives and institutions acting practically to improve the human rights situation by exposing, often via the internet, abuse of or arbitrary exercise power and concrete instances of injustice, in assisting victims of torture, imprisonment or arbitrary measures, and informing the public. There are doubtless around two hundred human rights organisations in Muslim countries of differing size, financial clout, ideological orientation and working methods, often operating despite enormous obstacles from the government. Three examples must suffice.

### **5.1 The Moroccan Equity and Reconciliation Commission**

Some of these are government initiatives like the Equity and Reconciliation Commission ("Instance Équité et Réconciliation", in short IER) set up in 2004 by King

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<sup>61</sup> A comparison between individual articles of the Universal Declaration of Human Rights and the foundations of the Sharia is to be found in Taslima Nasrin. *Demokratie und Menschenrechte im Islam. Aufklärung und Kritik* 2/1996, p. 108-114 and: [http://www.gkpn.de/nasrin\\_islam.htm](http://www.gkpn.de/nasrin_islam.htm) (27.05.2007).

<sup>62</sup> Bahman Nirumand. *Anpassung an zeitgemäße Lesarten des Islam*. <http://tinyurl.com/niru2003> (27.5.2007), p. 1.

Mohammed VI to investigate the human rights situation in Morocco. The commission is said to have received over 20,000 requests for examination or restitution of injustice suffered within a matter of years, and this is probably only the tip of the iceberg.<sup>63</sup>

The commission's competence and procedures were established by a royal decree of 10 April 2004. Its principal task was to ascertain human rights abuses of past decades, in particular the period from independence in 1956 to 1999, when the first compensatory commission for the victims of arbitrary government measures, the "Instance Indépendante d'Arbitrage" (IIA) was set up. Its task had been primarily to gather information, to ascertain the government's involvement in human rights abuses in cases of arbitrary imprisonment, torture, "disappeared" (abducted) persons, and to determine appropriate compensation or restitution for injustice suffered. The IER also concentrated from 2004 onwards on human rights abuses by organs of the state. Although this limited the commission's frame of reference by excluding private parties, and although the commission had no judicial competence, its work enjoyed popular respect, not least because it was made up of human rights activists and past victims of arbitrary imprisonment.

In addition, from 2004 onwards, colloquies and public political discussion were organised and reports of victims and their families about serious human rights abuses in Morocco were broadcast on radio and television. For all its limitations this was a unique and sensational instance of attempting on such a scale to come to terms with the past in a Muslim country.<sup>64</sup>

This must be qualified by noting that the commission's existence has not yet led to a change in the constitution, to fundamental reforms of state institutions such as the police, the courts or the secret services, or to questioning Islam's absolute status as the state religion. Critics have thus spoken of a smoke-screen to cover up day by day injustice and a merely ostensible opening of public discourse. Nevertheless critical reflection of injustice suffered in full view of society will certainly not be without permanent effect on public consciousness and political perceptions.

The "Equity and Reconciliation Commission" is not the only organisation promoting and defending human rights in Morocco. Mention might be made of the "Moroccan Human Rights Organisation" (Organisation Marocaine des Droits de l'Homme, OMDH), the "Moroccan Human Rights Association" (Association Marocaine des Droits Humains, AMDH) and the "Truth and Justice Forum" (Forum Vérité et Justice, FVJ).

<sup>63</sup> This number is mentioned in the report of Hinnerk Berlekamp. Marokko. Die Folteropfer erhalten das Wort, <http://preview.tinyurl.com/Berl04> (29.05.2007), p. 1.

<sup>64</sup> This is the tenor of Bettina Dennerlein's article *Zwischen Politik und Selbstreflexion Die Versöhnungskommission Instance Equité et Réconciliation*. Inamo 44/2005, p. 11-14.

## 5.2 The Arab Organization for Human Rights (AOHR)

The “Arab Organization for Human Rights” was founded in Limassol, Cyprus, on 1 December 1983, a “milestone in the Arabic human rights movement.”<sup>65</sup> This umbrella organisation with its headquarters in Cairo groups various regional human rights organisations and today has affiliated branches or partners in Morocco, Algeria, Tunisia, Jordan, Lebanon, Yemen, Bahrain und Kuwait.<sup>66</sup>

The stated aim of the AOHR is to support human rights for all inhabitants of Arabic countries on the basis of the Universal Declaration of Human Rights with a particular focus on those who by UN standards are unjustly imprisoned or subject to or threatened with restrictions or repression on the grounds of their religion, sex, political convictions, race, colour or language.

The executive committee, originally made up of a broad spectrum of views ranging from national-liberal, Nasserite, moderate Muslims to Marxists,<sup>67</sup> concentrates its efforts on defending and obtaining the release of political prisoners and supporting their families. Where direct involvement is impossible, it takes account of and documents human rights abuses in publications, conferences and seminars.<sup>68</sup>

The presence of Islamist activists in the leadership of the AOHR before 1990 may seem surprising, yet the statutes lay down that human rights are not to be defined on the basis of the Sharia. In connection with the work of the AOHR only a very general reference to divine revelation and a commitment to fundamental human rights conventions were desirable.<sup>69</sup>

## 5.3 The Egyptian Organization for Human Rights (EOHR)

The “Egyptian Organization for Human Rights” (EOHR) is one of the oldest NGOs (non-government organisations), with observer status at the United Nations and a member of “l’Organisation Mondiale contre la Torture” (OMCT: World Organisation Against Torture), the “Arab Organization for Human Rights” (AOHR), the “Fédération Internationale des Ligues des Droits de l’Homme” (FIDH: International Federation for Human Rights) and the “International Commission of Jurists” (ICJ).

<sup>65</sup> According to Carsten Jürgensen. *Demokratie und Menschenrechte in der arabischen Welt. Positionen arabischer Menschenrechtsaktivisten*. Deutsches Orient-Institut: Hamburg, 1994, p. 33.

<sup>66</sup> Carsten Jürgensen. *Die Menschenrechtsdebatte*. in: Sigrid Faath (ed.). *Politische und gesellschaftliche Debatten in Nordafrika, Nah- und Mittelost*. Deutsches Orient-Institut: Hamburg, 2004, pp. 295-318, here p. 296.

<sup>67</sup> Carsten Jürgensen. *Demokratie und Menschenrechte in der arabischen Welt. Positionen arabischer Menschenrechtsaktivisten*. Deutsches Orient-Institut: Hamburg, 1994, p. 35.

<sup>68</sup> Cf: the self-portrayal of the Arab Organization for Human Rights website at <http://www.aohr.org> (29.10.2006).

<sup>69</sup> According to Carsten Jürgensen. *Demokratie und Menschenrechte in der arabischen Welt. Positionen arabischer Menschenrechtsaktivisten*. Deutsches Orient-Institut: Hamburg, 1994, p. 38, 151.

The EOHR is widely linked, exercises the function of watchdog and documentation in safeguarding human rights in Egypt and acts to promote their wider application. In 2006 the EOHR was said to have 2,300 members in 17 branches in all Egyptian provinces.<sup>70</sup>

The EOHR has had a protracted struggle for official recognition. Founded in 1985 as a branch of the “Arab Organization for Human Rights”, it applied for registration as an NGO in 1987. This was repeatedly refused by the Egyptian Social ministry and the EOHR had to pursue its case through the courts until it finally received its registration number as a legal NGO on 24 June 2003, 18 years after it was founded.

The EOHR documents human rights abuses and presses charges irrespective of the identity of victims and perpetrators, not only when private parties are involved but also representatives of the state. EOHR files record dozens of cases of torture and physical abuse, some of them with fatal outcome. Making use of forensic documents and police reports, eye-witness accounts and records of court cases against police officers as well as its own researches, the EOHR has been able to demonstrate the involvement of security personnel in physical abuse. While clearly by no means exhaustive, the cases on file have over the past two decades exposed the systematic use of torture in Egyptian police stations. The EOHR also seeks to document discrimination against women and to support refugees.

The work of the EOHR not only offers assistance but also breaks a taboo by bringing socially and politically sensitive information into the public arena and calling for solidarity and help for the victims. It seeks to increase public awareness through the press and to involve private institutions as partners.

One of the stated aims of the EOHR is the reform of the Egyptian constitution and legislation to bring them into harmony with the Universal Declaration of Human Rights. This, and the call for an independent judiciary and an end to discrimination of grounds of religion<sup>71</sup> show how radical and substantial is the approach to the problem. These fundamental issues of established power structures, the constitution and the value systems which lie behind it will be the factors which in the long term decide how successful the work of this and similar human rights organisations in Muslim countries will prove to be.

## **6. Human rights – where do we go from here?**

Overall the human rights debate in Muslim countries has intensified in the last ten to fifteen years and there has been an increase both in the number and the

<sup>70</sup> Cf. the self-portrayal of the Egyptian Organisation for Human Rights web site at: <http://www.eohr.org/info/about.htm> (29.10.2006).

<sup>71</sup> The Egyptian Organisation for Human Rights: <http://www.eohr.org/info/about.htm> (29.10.2006), p. 1.

activities of human rights organisations and activists with a number of successes and some progress. The demands of such groups and individuals are in no way matched by the practical reality in most Muslim countries, where human rights groups are often hindered in their work by Islamist groups and repressive regimes. Limited access to a largely censored press renders it difficult for human rights organisations to publicise their concerns and seek the support of the mass of the population. Access to the internet is still too limited for it to play a leading role in increasing public awareness.

In this context mention must also be made of the efforts of Arabic feminists such as Fatima Mernissi or Nawal al-Saadawi and numerous women's organisations, who are involved not only in the struggle for woman's rights but also democracy and human rights in general. Their untiring efforts have in recent years led to reforms in marriage and family law in several Arab countries which have improved women's lot, including raising the marriage age, making it more difficult for husbands to obtain a divorce and the abolition of the wife's duty of obedience, which had been anchored in the traditional concept of marriage.

## **7. The Sharia's influence on the discussion of human rights**

Why does it prove so significantly difficult to improve the human rights situation in Muslim countries whereas at the same time the majority of people desire greater freedom? Does the problem lie in political abuses, economic underdevelopment, the high illiteracy rate or the lack of a civil society which is the necessary condition of political participation? And why does it prove so difficult to develop a civil society?

However much economic, social and political factors may play their part, one problem which cannot be overlooked is the attempt by orthodox theologians to find a basis for human rights in the Sharia as eternally valid divine law, as it is well-nigh uncritically preached from the pulpits of universities and mosques. As long as this traditional, ahistorical interpretation of the Sharia remains the sole unquestionable norm for man's present existence and thus for the definition of human rights, liberal or secular grounds for conceding comprehensive human rights will remain in the shadow of the Islamic human rights declarations referred to above, and critics will continue to be in danger, for "some reforming Islamic theologians believe there is a real chance of human rights standards overcoming certain traditions and reinstating the original humane character of Islam, but their political influence is minimal."<sup>72</sup> The drafts of the 1990 "Cairo Declaration of Human Rights in Islam"

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<sup>72</sup> Ali al-Nasani. Menschenrechte im Islam. amnesty international. <http://tinyurl.com/Nasani02> (19.05.2007), p. 2.



and the 1981 “Universal Islamic Declaration of Human Rights“ clearly leave little room for pluralism, freedom of opinion or any kind of critical discussion.

If democracy is only conceivable if, according to Murad Hofmann, some primitive version of it can be discovered in the Koran as practised by Muhammad and his companions, secular grounds for introducing it are ruled out of court unless a majority, however constituted, is able to discover it there. The argument then runs: “From the fact that the first four Caliphs were elected without being blood relatives of Muhammad one may deduce that an Islamic state can be a democratic republic and at least does not have to be a monarchy.”<sup>73</sup>

At the same time it is important to emphasize that it is not only religion and its powerful representatives who hold back the improvement of human rights but also dictatorial regimes or even a secular state such as Turkey, which for non-religious motives refuses to concede comprehensive rights to minorities. Another aspect of the overall picture is that in most Muslim countries not only the political or ideological opposition but also Islamist groups complain of arbitrary measures and repression.

It is widely known that despite affirmations to the contrary the Sharia is nowhere fully applied in its pristine purity, not even in Afghanistan or Iran, but remains even today a legal ideal, an ideology used by certain groups mainly to underpin the traditional concept of marriage and family law and to consolidate their own power base. The Sharia is codified nowhere and thus remains dependent upon interpretation.

### **7.1 The authority of the Sharia**

The Sharia encompasses all legal regulations dealing with every aspect of life and refers to the totality of divine commandments as they are laid down in the Koran and in the Islamic tradition, as interpreted by authoritative theologians, especially up to the 10th century. There is also disagreement among theologians as to what precisely the Koran lays down in specific cases. For instance: does it prescribe or forbid polygamy? This means there cannot be a single Sharia code.

The Sharia contains norms for both vertical and horizontal human relationships, instructions about ethical behaviour and social and family affairs, for example economic, inheritance, association, marriage and criminal law, but also regulations for religious practice and ritual, especially the “Five Pillars of Islam”: the confession of faith, prayers, fasting, almsgiving and the pilgrimage to Mecca. The individual has as little say in the performance of the daily prayer ritual as in the clauses of a

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<sup>73</sup> Murad Hofmann. Der Islam und die Menschenrechte. <http://www.way-to-allah.com/themen/Menschenrechte.html> (27.05.2007), p. 4.

marriage contract laid down by the Sharia, without which the marriage would not be legally valid.

Although there are critical Muslim opinions calling for a fundamentally fresh interpretation of the Sharia, its authority has in theory changed little. Ancient Sharia norms belonging to a pool of decisions already formed in the early centuries of Islam have thus been adopted to varying degrees into the legislation of Muslim countries. But even where legislation has only partially been affected, the Sharia exerts a considerable influence as a norm for social behaviour and in its claim to be the genuine and valid law, as being of divine origin. One may adhere to the law of the land, for instance in Turkey to monogamy, but the comprehensive claim of the Sharia has never been modified or questioned by theologians and it is still regarded by many people as the authentic framework for life and belief. One consequence of this is that, especially in rural Turkey, polygamous marriages permitted by the Sharia are contracted especially in Anatolia, because this corresponds to the way people feel about the Sharia's priority over secular laws.

Another example are the pervasive "Sharia groups" in a relatively secularised country such as Syria. In these groups the application of the Sharia is taught alongside the official legal studies at the university in private classes by a leading religious personality. What such students learn is applied in their personal life and attitudes to the law in their immediate surroundings, and they develop a sense that the Sharia norms they have informally learned are the real ones. The leaders of these Sharia groups, the Sheikhs, exercise public influence as teachers through the media, in the universities or as preachers in the mosque and Muftis (legal experts), so that alongside a fairly moderate state Islam there has spread a conservative, orthodox Islam also which, while not, as in Iran, propagated by the top political leadership, exerts a considerable and widespread influence in many areas of society. By means of this and other channels of communication preoccupation with and application of the Sharia plays a much greater role in social life as would appear from a simple comparison of Syrian legislation with Sharia norms.<sup>74</sup>

## 7.2 The Sharia's influence

It would therefore be a grave error to underestimate the practical significance of the Sharia even if in numerous countries and many areas it has only partially been adopted in legislation or not at all. Its presence in daily life is felt in many areas through sermons in the mosque, passages cited during the marriage ceremony, at

<sup>74</sup> See the description of personal observation in Damascus in Maurits S. Berger's *The Shari'a and Legal Pluralism. The Example of Syria*. in: Baudouin Dupret, Maurits Berger, Laila al-Zwaini (eds.) *Legal Pluralism in the Arab World, Arab and Islamic Laws Series*, vol. 18. Kluwer Law International: The Hague, 1999, p 113-124, here p. 115ff.

funerals and festivities, as well as through tradition and the legal sense influenced by it. "Many Arabic countries are permeated by handed down Sharia law to an extent difficult to imagine . . . so that for the Muslim who is subject to it, every action and aspect of life is assessed on a graduated scale between what is allowed and what is rejected by God. The extent to which the religious Sharia law influences collective and individual convictions and behavioural expectations is difficult for Western social sciences to analyse, since it is not a case of some autonomous field of legal or moral norms, nor a purely 'rational' ethic such as is characteristic of the more or less positivistic continental European legal systems with their separation between religion and state and between politics and morality."<sup>75</sup>

This is why the Sharia as traditionally interpreted continues to some extent to influence the legislation in all Muslim countries, especially in marital and family law. Its social influence is perhaps even greater due to the fact that the majority of the population, theoretically at least, hardly entertains doubts as to the infallibility of the text of the Koran or the fundamental estimation of the Sharia as an indispensable divine norm and thence as a rule for living. Sharia norms are transmitted via Koran schools, mosque sermons, reports of the tradition, fatwas, literature, cassettes, discussion groups and academic circles, and create a legal sense which at least emotionally is closer to those norms than would seem likely given the official university theology or the moderate position of the state, and in which they are not up for discussion, but at best only subject to interpretation.

A fundamental and comprehensive improvement of the human rights situation in Muslim countries is therefore not to be expected as long as the claims of the Sharia cannot be openly discussed in public. To quote Bassam Tibi, "there can be no synthesis between Islam and human rights without a radical reform of religion and jurisprudence which enlightened Muslims such as the Sudanese lawyer Abdullahi An-Na'im have called for."<sup>76</sup>

To leave the unlimited theoretical claim of the Sharia and its influential conservative and political interpretation untouched means on the one hand that its critics continue to be condemned to exile or anonymity, and on the other hand that the scope for extending human rights remains limited and their practical application extremely difficult.

As long as influential theological and political opinion continues to regard Islam as such and the attempt to recreate 7th century Arabic society as identical with justice, progress and genuine civilisation, a critical discussion of the Sharia claims is

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<sup>75</sup> Birgit Krawietz. *Die Hurma. Scharierechtlicher Schutz vor Eingriffen in die körperliche Unversehrtheit nach arabischen Fatwas des 20. Jahrhunderts.* Duncker & Humblot: Berlin, 1991, p. 77.

<sup>76</sup> Bassam Tibi. *Im Schatten Allahs. Der Islam und die Menschenrechte.* Piper: München, 1996, p. 45.

hardly to be expected. "From this religious point of view modernity appears to be a backward step, since it leaves behind the real origins and their premises."<sup>77</sup>

One can only hope that the official theological line will open up to a historical-critical discussion of the Sharia in the not too distant future.

### **Recommendations for further reading**

- An-Na'im, Abdullahi Ahmed. Beyond dhimmihood: citizenship and human rights. In: Rober W. Hefner (Ed.). *The new Cambridge history of Islam. Vol. 6 - Muslims and modernity: culture and society since 1800.* Cambridge University Press, Cambridge, 2010, p. 314-334.
- An-Na'im, Abdullahi A. Islam and human rights: beyond the universality debate. In: Mashood A. Baderin (Ed.) *International law and Islamic law.* Ashgate, Aldershot, 2008, p. 399-407.
- Guichon, Audrey. Some arguments on the universality of human rights in Islam. In: Javaid Rehman and Susan C. Breau (Edd.) *Religion, human rights and international law: a critical examination of Islamic state practices.* Nijhoff, Leiden, 2007, p. 167-194.
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- Vijapur, Abdulrahim P. The Islamic concept of human rights and responsibilities: insights that Islam can give to the West. In: *Islamic Quarterly* no 53 iii (2009), p. 251-268.

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<sup>77</sup> Adonis. Die Sackgasse der Moderne in der arabischen Gesellschaft. in: Erdmute Heller; Hassouna Mosbahi (eds.). *Islam, Demokratie, Moderne. Aktuelle Antworten arabischer Denker.* C. H. Beck: München, 1998, p. 62-71, here p. 69.